

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 12-11093-GAO

ELIZABETH TREMBLAY-REGO
Plaintiff,

v.

WELLS FARGO BANK, N.A.
Defendant.

OPINION AND ORDER

August 13, 2013

O'TOOLE, D.J.

This case arises out of a reverse mortgage between Wells Fargo and the plaintiff's deceased mother. The plaintiff has filed a complaint against Wells Fargo seeking a declaratory judgment that the mortgage was invalid, quiet title to the property and damages for a violation of the implied covenant of good faith and fair dealing. Wells Fargo has moved to dismiss, arguing that the plaintiff lacks standing to bring the Complaint.

According to the Complaint, the plaintiff's mother, Louise Tremblay owned a house in New Bedford, Massachusetts. In 1992 the house was transferred via a quitclaim deed from the mother to the plaintiff, granting a life estate to the mother and the remainder to the plaintiff in fee simple. In 2009 the plaintiff's mother executed a reverse mortgage on the property with Wells Fargo. At that time the plaintiff's mother was mentally disabled and lacked the capacity to contract. Wells Fargo was aware of the plaintiff's fee simple remainder in the house but failed to advise the plaintiff or her mother about the remainder interest. The plaintiff did not consent to the mortgage. Wells Fargo is now attempting to foreclose.

Wells Fargo argues that the plaintiff lacks standing to bring this action. It appears that on January 10, 2012, the plaintiff deeded her personal interest in the property to the Hummingbird Realty Trust. The deed was recorded in the Bristol County Register of Deeds. This case was commenced in state court in June 2012. The trust, holding title, was not, and is not, a named plaintiff. Nor is the estate of Louise Tremblay, the mortgagor, a party this action.

The plaintiff as an individual is neither the record owner of the property nor the mortgagor, and she may not bring suit in her individual capacity alone.

For the reasons stated herein, the Motion to Dismiss (dkt. no. 15) is GRANTED. The complaint is DISMISSED.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge